

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ANA A.,

Petitioner,

THE SUPERIOR COURT OF SAN LUIS
OBISPO COUNTY,

Respondent;

v.

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES

Real Party in Interest.

2d Civil No. B222550
(Super. Ct. No. JV48736)
(San Luis Obispo County)

Ana A. (Mother) seeks extraordinary writ review of a juvenile court order bypassing family reunification services and setting the matter for a permanent plan hearing. (Welf. & Inst. Code, § 366.26¹; Cal. Rules of Court, rule 8.452.) We deny the petition for extraordinary writ.

FACTS AND PROCEDURAL HISTORY

On November 23, 2009, the San Luis Obispo County Department of Social Services (DSS) filed a dependency petition on behalf of twelve-year-old G.A., eight-year-

¹ All further statutory references are to the Welfare and Institutions Code.

old M.A., and two-year-old A.A. DSS alleged that the children's father (Father) had physically and sexually abused G. for four years and that Mother had failed to protect her. (§ 300, subds. (a), (b), (d), (g).) In a detention report filed with the juvenile court, DSS stated that the A. family has a long history of domestic violence and that Father abuses alcohol and drugs. DSS stated that Mother claims to have been unaware of her daughter's sexual abuse.

On November 24, 2009, the juvenile court ordered that the children be detained. On January 29, 2010, DSS filed an amended dependency petition adding allegations that on several occasions, Mother and M. found Father in G.'s bed and pulled him away from her. DSS also alleged that Mother warned G. not to repeat allegations of the sexual abuse to others. G. complained that the sexual abuse continued for four years. On November 19, 2009, police officers arrested and incarcerated Father on charges of child molestation.

On February 19, 22, and 23, 2010, the juvenile court held a contested jurisdiction and disposition hearing. The court received evidence of DSS reports and addenda thereto. G., Mother, the DSS social worker and family friends testified.

DSS reports stated that in December 2009, authorities deported Father to Mexico and that Mother had been in contact with him. Mother had posted bail for Father during his previous arrests for domestic violence and allowed him in the family home despite a temporary restraining order against his contact with the family. On one occasion, police officers arrested Mother for interfering with a police officer when she attempted to prevent Father's arrest. Mother was convicted, incarcerated for 120 days, and placed on formal probation.

G. informed DSS that Father had sexually abused her, including acts of rape and sodomy, for four years. She stated that Father abused alcohol and brought pornography into the home. G. informed DSS that Mother saw Father sodomizing her on one occasion and shouted for Father to "[s]top being stupid and go back to bed." When she informed Mother that Father was "touching" her, Mother replied that she had "a sick mind" and was "crazy."

M. informed DSS that she had seen Father touching G.'s breasts and genitals. She stated that she and Mother tried to pull Father away from G. when he was atop G. in bed. On another occasion, Mother threw a beer can at Father when he was in bed with G.

At the combined jurisdiction and disposition hearing, G. testified that she informed Mother that Father "kept on touching [her]," but that Mother did not believe her. She stated that Mother and M. witnessed the acts of sexual abuse by Father. Some months before the children's detention, G. wrote a statement describing the physical and sexual abuse and gave it to her best friend for safekeeping.² G. also testified that Mother warned her not to inform others of the physical abuse that family members suffered at the hands of Father.

Mother testified that she did not see any acts of sexual abuse and denied that G. had so informed her. She described Father as "a violent man when he drank." Mother testified that she now realizes that G. had been sexually and physically abused. A tenant who resided in the family home also testified that she did not see any sexual abuse and that G. had not complained of abuse to her.

DSS requested the court to bypass family reunification services to Father pursuant to section 361.5, subdivision (b)(6) [infliction of severe sexual abuse or physical harm to child or sibling].³ It recommended that Mother receive services, however, "in the hopes that [she] and her children can therapeutically work through all of the hurt, pain, and abuse that they have all experienced." Counsel for the minors requested that neither

² As part of its criminal investigation, the San Luis Obispo Sheriff's Department interviewed the friend and took the letter as evidence in the pending prosecution.

³ Section 361.5, subdivision (b)(6) provides: "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian."

Mother nor Father receive family reunification services pursuant to section 361.5, subdivision (b)(6) and *Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 561-562.

The juvenile court sustained the allegations of the amended dependency petition with interlineations to conform to proof. After hearing argument by the parties, the court ordered that neither parent receive reunification services. In ruling, the trial judge stated that "[t]he testimony was clear and unequivocal that [Mother] knew that G. was being sexually abused by her husband." The judge commented that Mother was "very much in denial." The court also considered section 361.5, subdivisions (c) and (h) and determined that reunification was not in the children's best interests. It then set the matter for a permanent plan hearing pursuant to section 366.26.

Mother seeks an extraordinary writ requesting that we vacate the order setting the matter for a permanent plan hearing and order DSS to provide family reunification services to her.

DISCUSSION

Mother argues that the juvenile court erred by denying her reunification services pursuant to the bypass provisions of section 361.5, subdivision (b)(6). She asserts that the subdivision does not apply to a parent who is negligently unaware that his or her child is being abused by the other parent. Mother relies on *Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 851, concluding that section 361.5, subdivision (b)(6) does not apply to a parent who reasonably should have known of a child's abuse because the section requires actual knowledge of the physical harm or the abusive acts. In sum, Mother asserts that there is insufficient evidence that she knew that G. was being sexually abused by Father.

In reviewing the sufficiency of evidence to support an order in a dependency proceeding, we view the evidence and draw all reasonable inferences therefrom in favor of the order. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) We do not reweigh the evidence, resolve evidentiary conflicts, or evaluate the credibility of witnesses. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Appellant bears the burden of establishing that a finding or order is not supported by sufficient evidence. (*Ibid.*) We

affirm an order denying reunification services if sufficient evidence supports the order. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839-840 ["[W]e must decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence"].)

Sufficient clear and convincing evidence supports the juvenile court's finding that Mother knew of Father's sexual abuse of G. In a DSS interview, G. stated that she informed Mother that Father was "touching" her, but that Mother replied that G. was "crazy" and had "a sick mind." G. testified that M. and Mother witnessed acts of sexual abuse. M. informed DSS that she and Mother tried to pull Father away from G. On one occasion, Mother threw a beer can at Father when he was in bed with G. G. stated that she did not want to reunify with Mother. The court evaluated the credibility of witnesses and resolved any evidentiary conflicts. We may not substitute our decision for that of the trier of fact. (*In re L.Y.L., supra*, 101 Cal.App.4th 942, 947.)

Amber K. v. Superior Court, supra, 146 Cal.App.4th 553, 561, supports the juvenile court's order. There the juvenile court denied family reunification services to a mother who permitted father, a known child molester, to stay overnight in the family home when he was released from prison. During the overnight visit, he molested another child. The reviewing court denied mother's petition for extraordinary writ because she had impliedly consented to the sexual abuse of her second child. "By its express terms, section 361.5, subdivision (b)(6) applies to a parent who gave actual or implied consent to the sexual abuse of the child by another person, as well as to the parent who was the actual perpetrator of the sexual abuse." (*Ibid.*) Here the court found that Mother knew of G.'s continuing sexual abuse by Father, but did not protect her. Indeed, Mother counseled G. not to inform others of the abuse.

Tyrone W. v. Superior Court, supra, 151 Cal.App.4th 839, 851, is not helpful to Mother. *Tyrone W.* held that section 361.5, subdivision (b)(6) requires actual knowledge of another's abusive physical acts. (*Tyrone W.*, at p. 851.) "We do not believe section 361.5, subdivision (b)(6) applies to a parent who 'reasonably should have known' of the abuse because that parent was not complicit in the infliction of physical harm by

act, omission or consent. As defined in subdivision (b)(6), omission and consent both require actual knowledge, if not of the physical harm itself, then of another's abusive acts. We hold that subdivision (b)(6) applies to the parent or parents who inflicted severe physical harm to the child whether by act, omission or consent, and does not apply to a negligent parent." (*Ibid.*) In contrast, the juvenile court here specifically found that Mother had actual knowledge of Father's sexual abuse of G. based upon "clear and unequivocal" testimony that Mother "knew what was going on."

Section 361.5, subdivision (c) provides that the court shall not order reunification services for a parent described in subdivision (b)(6) (among other (b) subdivisions), unless the court finds by clear and convincing evidence that reunification is in the best interest of the child. The burden rests upon petitioner to establish that reunification would serve the best interests of her children. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.)

Here the juvenile court's finding that reunification services would not be in the children's best interests is supported by sufficient evidence. The court expressly considered and discussed the six factors of section 361.5, subdivision (h), including the circumstances of the abuse, the trauma to the children, and whether the children wish to reunify. Mother has not established error.

We deny the petition for extraordinary writ.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Ginger E. Garrett, Judge
Superior Court County of San Luis Obispo

Gerald C. Carrasco for Petitioner.

No appearance for Respondent.

Warren R. Jensen, County Counsel, Patricia Stevens, Deputy County Counsel, for San Luis Obispo County Department of Social Services.

Gerald T. Shea, District Attorney, Sandra L. Mitchell, Deputy District Attorney, for Minors.